IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISIDICTION

GARNISHEE NOTICE NO.1390 OF 2001
IN
SUIT NO. 3979 OF 1986

Indian Commercial Company Limited ... Petitioner.
v/s.
Amrish R. Kilachand & Ors. ... Respondents.

Gautam Patel with Toral Shah i/b. Tayabji and Dayabhai and Co. for the plaintiffs/applicants.
Ms. F. Sethna wife of Ms. D.Das i/b. D.Seh & Co. for the petitioner.
Mr. D.H. Nanavati, for respondent nos.2,3 and 5.

CORAM: S.U. KAMDAR, J.

DATE : 20TH DECEMBER, 2004.

P.C. :

1. The present Garnishee Notice has been initiated in pursuance of an Award decree passed by the Arbitrator dated 25.2.1999. The said Award decree was the subject matter of a challenge under the Arbitration Petition no.221 of 1999. By 222 of 1999, 223 of 1999, 224 of

1999, and 225 of 1999 by an order and judgment of the learned Single judge dated 27.8.1999 the challenge to the Award was rejected save and except that the cost awarded by the arbitrator of sum of Rs.7,00,000/- was reduced to the sum of Rs.350,000/-. It is an admitted position before me that under the award as modified there is an outstanding amount of Rs.8,73,870/- as due and payable by the defendants to the plaintiff. This order of the learned single judge was upheld by an appeal which by its order dated 25.01.2002 passed in appeal no.185 to 190 of 2001. Thereafter the Award was put in execution and execution proceedings were initiated. There were certain orders passed by the division Bench in course of the execution proceedings. Both the order in the main proceedings as well as in execution proceedings were subject matter of challenge in two separate leave petitions being Special Leave Petition (Civil) 20903 of 2002 and 23471 and 23475 of 2002. By an order and judgment of 24.9.2004 both the special leave petitions are dismissed.

2. In one of the connected proceedings, the division Bench of this Court passed an order dated 23.4.2004

inter-alia directing that the recoveries of the amount covered by the award should not be effected till 2.7.2004 in view of pending Special Leave Petitions in the apex Court. The special leave petitions are now disposed of by the aforesaid order dated 24.9.2004.

3. By the present Garnishee Notice the plaintiffs seek to attach and recover amount which is due and payable by the trustees of the estate of Ambalal and Company to the judgment debtor being defendants herein to the extent of unsatisfied award decree amount of Rs.8,73,870/-. The said Garnishee Notice has been taken out on 29.10.2001 and the same has been served upon the defendants as well as the trustees of estate of Ambalal and Company. Mr. D.H. Nanavati who was appearing in the morning session when the matter was called out has submitted to the court that he would not able to remain personally present in the afternoon session however, he contends that the said amount is held by the trust on behalf of judgment debtor. He further submits that in so far as present Garnishee Notice is concerned he submits to the order of the Court.

4. The learned Advocate for the defendants judgment debtor has inter-alia contended before me that the Garnishee Notice which is taken out is not in accordance with Order 21 Rule 46A of the Civil Procedure Code and therefore the present Garnishee notice should be dismissed. However, on the other hand the learned Counsel for the Plaintiffs have pointed out that the Order 21 Rule 46 A insofar as in its application to High Court is concerned, the same is modified in exercise of power conferred on the High Court under Section 122 of the Code of Civil Procedure and thus the High Court rules as framed are applicable and not Order 21 Rule 46 A of C.P. Code. The provisions of the Garnishee Notice as far as this Court is concerned governed by the High Court Rule 345 and the present application taken out by the plaintiffs is in consonance with the said prescribed Rule 345 is in prescribed format.

5. On the aforesaid position in law being pointed out, the learned counsel for the defendant has now contended that under Rule 345 of the High Court Rules it is required that an application should be made by the decree holder to the Prothonotary and Senior Master High

Court Mumbai and thereafter the Prothonotary and Senior Master can issue the Garnishee Notice. It has been vehemently contended by the learned counsel for the defendant that the application which was made by the plaintiffs to the Prothonotary and Senior Master has not been served upon the defendants and thus the defendants are unable to file reply to the present Garnishee Notice. It has been further urged that the principles of natural justice requires that the entire defence including the grounds set out in the said application which is made to the Prothonotary and Senior Master should be made available to the defendants and it is only thereafter that the defendant can file reply to the Garnishee notice. I am unable to accept the contention of the learned counsel for the defendants. Firstly, the application which has been made to the Prothonotary and Senior Master is not before me for adjudication. Secondly, the application is a formal application under the High Court Rule 345 and it is the Garnishee Notice which is issued pursuant there to required to be adjudicated by this Court before this order is made absolute. It is not in dispute that the defendants are served with the Garnishee Notice. The defendants are

also aware of the facts of the present case that the Garnishee Notice is actually issued in execution of an award decree which has attained finality. In view thereof I am not impressed by the contentions of the learned counsel for the defendants that hearing of the Garnishee Notice should be deferred till the application which has been made to the Prothonotary and Senior Master is furnished to then.

6. Thereafter, the learned counsel for the defendant has submitted that a compilation of orders tendered by the learned counsel for the plaintiff should not be taken on record. It has been contended that this compilation of orders are served to the defendants in the course of hearing and that the defendant had no opportunity to peruse the same, and thus this court should not pass any orders in respect of the Garnishee notice taking into consideration order already passed and copies furnished in the compilation. The compilation of orders are in respect of proceedings inter-se between the parties. The defendants were parties to the said proceedings and have contested the said litigation therefore defendants and their advocates are aware of the orders that have been

passed from time to time. In the light of the aforesaid fact the contention is devoid of any merits that the compilation should not be taken on record or alternatively an adjournment should be granted to the defendants. I therefore reject the said contention.

7. Thereafter the learned counsel for the defendant has contested that there are some proceedings in contemplation before the Apex Court. However, she has further stated that she is not aware of the kind of proceedings which are likely to be initiated in the Supreme Court. However, according to her it can be in the form of review of the order dated 24.9.2004 passed by the Apex Court. On the said ground, once again an application is made for adjournment of hearing of Garnishee Notice. I am unable to grant such an adjournment as sought by the larned advocate for the defendant. The matter was on board on earlier occasions and it was adjourned from time to time by me. It was made clear that the matter will be heard today and disposed of. Invite of the said fact, the learned counsel for the defendant had not remained present in the morning session when the matter was called out. However,

with a view to accommodate the learned counsel for the defendant the matter was kept back and has been taken up for hearing now. Once again the learned counsel for the defendant makes a usual application for seeking an adjournment. In the aforesaid facts and circumstances of the case, I am unable to grant any of such request of the defendant. The learned counsel for the defendant states that she has nothing to address on merits.

8. In the aforesaid circumstances, I making the present Garnishee Notice absolute in terms of first part of the notice which proceeds the word "or". The said portion of the prayer is set out hereunder :-

> . "Take notice that you are hereby required on or before 11th day of November 2002.
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> . to pay to the Sheriff of Bombay:
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> . the movable property in your possession which has been attached under Order XXI Rule 46 of the Code of Civil Procedure 1908 in execution of the Award dated 25th February 1999 passed in

the above suit against the Defendant Nos.1 and 2 so much thereof as may be sufficient to satisfy the Award and the costs of execution".

. The learned counsel for the defendants makes an oral application for stay. Application rejected.

. The notice is made absolute in terms of aforesaid terms. The defendant to pay cost of this notice quantified at Rs.2,500/-.

SD/-

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